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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,170	07/31/2003	Janice M. Golda	ITL.1019US (P16706)	1421
21906	7590	06/02/2005	EXAMINER	
TROP PRUNER & HU, PC 8554 KATY FREEWAY SUITE 100 HOUSTON, TX 77024			PICKETT, JOHN G	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/631,170

Applicant(s)

GOLDA, JANICE M.

Examiner

Gregory Pickett

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 21-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7,21,23,25-33 is/are rejected.
- 7) ☒ Claim(s) 3,22 and 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This Office Action acknowledges the applicant's Amendment submitted 3 March 2005. Claims 1-7 and 21-33 are pending in the application. Claims 21-33 are new.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 112***

3. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the limitation "the thermoelectric source" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. To prosecute the examination of the claim, the examiner assumes a thermophoretic source.

#### ***Claim Rejections - 35 USC § 102***

4. Claims 1, 2, 4, 5, 7, 21, 23, 25-29, 32, and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Merkle (US 2,467,268).

Regarding claim 1, the examiner asserts that the reticle is not positively recited. Merkle discloses the provision of a self-contained thermophoretic source **28** external to carrier **29**. Carrier **29** is capable of retaining a reticle.

As to claim 2, source **28** is under carrier **29**.

As to claim 4, source **28** is dry ice.

As to claims 5 and 21, the examiner asserts that the reticle is not positively recited. Merkle discloses source **28** and carrier **29** within container/shipping box **2**.

As to claim 7, the examiner asserts that the reticle is not positively recited. Merkle is capable of retaining the claimed reticles.

Regarding claim 23, upon insertion into the shipping box **2**, source **28** inherently creates a temperature gradient inasmuch as disclosed and claimed by the applicant.

As to claims 25 and 26, the examiner asserts that the reticles are not positively recited. Merkle inherently creates a temperature gradient for any retained articles inasmuch as disclosed and claimed by the applicant.

As to claim 27, the examiner asserts that the reticles are not positively recited. Merkle discloses source **28** separated from the carried articles by pad **27**.

As to claims 28 and 29, Merkle discloses dry ice, which does not require a power source.

Regarding claims 32 and 33, the examiner asserts that the reticle is not positively recited. Merkle discloses placement of a thermophoretic source **28** within a shipping container **2**. Source **28** is dry ice, which does not require an external power source.

### ***Claim Rejections - 35 USC § 103***

5. Claims 6, 30, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merkle in view of Nazaroff et al (US 5,061,444; previously supplied to applicant).

Art Unit: 3728

The examiner notes that the applicant has not disputed the interchangeability of dry ice with the Peltier source, the examiner interprets this as an admission of art recognized equivalence. Nazaroff et al discloses that a Peltier source was an equivalent thermophoretic source. Therefore, because these two thermophoretic sources were art recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the Peltier source of Nazaroff et al for the dry ice of Merkle.

#### ***Allowable Subject Matter***

6. Claims 3, 22, and 24 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

#### ***Response to Arguments***

8. Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3728

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*for*

Greg Pickett  
Examiner  
27 May 2005



**LUAN K. BUI  
PRIMARY EXAMINER**